

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANTHONY S. BERRINGER, No. C 10-05913 CW (PR)
Plaintiff, ORDER OF DISMISSAL
v.
CORRECTIONAL OFFICER ROCHA,
et al.,
Defendants.

Plaintiff, a state prisoner, has filed a pro se complaint under 42 U.S.C. § 1983. He also seeks leave to proceed in forma pauperis under 28 U.S.C. § 1915. Plaintiff has not exhausted California's prison administrative process, however. On January 12, 2011, Plaintiff filed a "Request to Hold In Abeyance Plaintiff's Premature Filing in Case No. CV 10-5913 CW (PR)," in which he asks the Court to hold this case "in abeyance until Plaintiff completes the exhaustion requirements as provided by the A.E.D.P.A." (Pl.'s Jan. 12, 2011 Req. at 1.)

The Prison Litigation Reform Act of 1995 (PLRA) amended 42 U.S.C. § 1997e to provide that "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). A complaint may be dismissed by the court for failure to exhaust if a prisoner "conce[des] to nonexhaustion" and "no exception to exhaustion applies." Id. at 1120. Here, Plaintiff concedes he has not exhausted his administrative remedies. Accordingly, the complaint must be DISMISSED without prejudice to refiling after exhausting

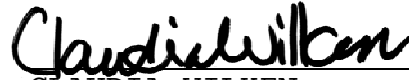
1 California's prison administrative process. See McKinney v. Carey,
2 311 F.3d 1198, 1199-1201 (9th Cir. 2002) (action must be dismissed
3 without prejudice unless prisoner exhausted available
4 administrative remedies before he filed suit, even if prisoner
5 fully exhausts while the suit is pending). Plaintiff's "Request to
6 Hold In Abeyance Plaintiff's Premature Filing in Case No. CV 10-
7 5913 CW (PR)" (docket no. 4) must be DENIED.

8 Plaintiff's request to proceed in forma pauperis (docket nos.
9 2, 5) is GRANTED. The Clerk of the Court shall enter judgment in
10 accordance with this Order and close the file.

11 This Order terminates Docket nos. 2, 4 and 5.

12 IT IS SO ORDERED.

13 Dated: 1/25/2011



CLAUDIA WILKEN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

ANTHONY S BERRINGER,

Plaintiff,

v.

ROCHA et al,

Defendant.

Case Number: CV10-05913 CW

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District Court, Northern District of California.

That on January 25, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle located in the Clerk's office.

Anthony S. Berringer K-66652
Salinas Valley State Prison
P.O. Box 1050
Soledad, CA 93960-1050

Dated: January 25, 2011

Richard W. Wieking, Clerk
By: Nikki Riley, Deputy Clerk